

ENVIRONMENTAL ADVISORY COUNCIL
Lansing, Michigan
Thursday, August 19, 2004 – 1:00 – 4:00 p.m.

Members in attendance: Jack Bails, Chris Bates, William Beckman, Harry Sheehan for Janis Bobrin, Steve Chester, Wil Cwikiel, Marty Fluharty, Chuck Hersey, Bill Murphy for Don Inman, Sara Lile, Terry Link, Steve Luzkow, Terry Miller, Frank Mortl, Paul Murray, Pamela Pugh, Lana Pollack, Allen Reilly, Mike Curry for Debby Rowe, Donele Wilkins, Scott Piggott for Wayne Wood.

DEQ Staff in attendance: Linda Albro Sparks, Frank Ruswick, Lynelle Marolf, JoAnn Merrick, Hal Fitch, Mike Jackson, Andy Hogarth, George Jackson.

OPENING

Frank began the meeting by introducing Andy Hogarth, Chief, and Lynelle Marolf, Assistant Chief, of the Remediation and Redevelopment Division (RRD). Andy and Lynelle will be leading today's discussion on the DEQ remediation programs. Frank alerted the EAC that Director Chester will need to step out of the meeting around 1:30 p.m. for another commitment, but he will return shortly after that.

Frank distributed the six month report on DEQ activities to implement the EAC recommendations to improve public involvement. Frank requested that EAC members review the report in preparation for further discussions in September and October. The September discussion will focus on EAC evaluation of the DEQ efforts to improve public involvement. The DEQ will also provide the EAC a draft Fiscal Year (FY) 05 implementation plan at the September meeting. At the October meeting we will discuss EAC comments on the draft FY 05 implementation plan. In response to a member's request, Frank will send to the EAC an electronic copy of the six month report so that it can be shared with others. The report will also be posted on the DEQ web page under "Announcements" and on the EAC page. Frank indicated that, in addition to the discussions of public involvement issues, the EAC meetings in September and October will address water management issues.

CURRENT ISSUES

Director Chester announced that he has asked Frank Ruswick to assume additional responsibilities in the Executive Office. Frank is now serving as Special Assistant to the Director and is assisting generally with a wide array of policy and program issues, as well as working with Legislative Liaison Carol Linteau to improve the DEQ's relationship with the legislature. Frank will continue to serve as the Facilitator for the EAC.

Director Chester described the recently restructuring of the DEQ. He provided the August 11, 2004 memorandum entitled DEQ Restructuring and Staffing Changes (Attachment 1). This

restructuring was determined to be necessary because of several problems caused by the September 2002 reorganization of the DEQ. The current restructuring was the result of a collaborative effort involving all DEQ divisions and both central and field staff to address those issues. While this restructuring reflects a large number of the recommendations resulting from that effort, the DEQ was also constrained by Office of State Budget requirements that any restructuring be budget neutral.

Director Chester highlighted some significant aspects of the restructuring: 1) Creating an Office of Civil Enforcement Coordination (OCEC) to improve the DEQ's overall enforcement activities through training, improved consistency, and better coordination of interdivisional efforts. 2) Recognizing that the size of the Water Bureau requires additional management assistance and adding new field staff to assist in conducting the wide range of programs administered by that Bureau. 3) Separating out the Office of Geological Survey and Land and Water Management Division to recognize the disparate functions of those programs and provide better service to all stakeholders and citizens. 4) Creating a Radiological Protection and Medical Waste Section in the Waste and Hazardous Materials Division to facilitate management of those activities. 5) Adding new staff in the Remediation and Redevelopment Division to provide additional compliance and enforcement assistance. There are no significant changes in Air Quality Division, Environmental Science and Services Divisions (ESSD), or Financial and Business Services Division. Director Chester is still considering whether to retain grant programs as consolidated in the ESSD by the 2002 reorganization or return them to the respective program divisions. Director Chester has had positive response to these changes.

A member commented that the changes seem to be signaling an interest in increased compliance and enforcement. Director Chester responded that he hoped to increase the effectiveness of compliance and enforcement by clarifying policies and making them available to the public. The OCEC will also increase the ability to cross train staff and do targeted enforcement. There will be close communication between the OCEC and the Office of the Attorney General. An OCEC Chief has not been named yet.

A member questioned how the restructuring could be budget neutral given the number of positions that were discussed. Director Chester described how conservative the DEQ had been recently in filling available positions given budget uncertainties and the pending restructuring.

A member asked whether the naming of the Water "Bureau" was merely a name change or had more substantive impact. Director Chester indicated that it is really a name change that recognizes the size of the water operation requiring two assistant division chiefs—one to oversee Lansing operations and one to oversee field operations. Both will report to the division chief. There are approximately 350 staff in that Bureau and a very large staff to manager ratio.

Mike Jackson provided a budget update. The administration and legislative leadership are continuing to work on target setting. Mike understands that the differences among the parties are narrowing. The hope is that budgets will be moved quickly through conference committees once agreements are reached.

A member asked about how fines and penalties from enforcement actions are used in the DEQ budget. Mike explained that the DEQ budget includes a “settlement deduct” that funds various programs throughout the department. The settlement deduct assumes that the DEQ will receive funds through the settlement of enforcement actions that can then be used to partially support DEQ programs. However, the DEQ wants to minimize this funding source as a lot of settlements are now statutorily directed to go into the cleanup and redevelopment fund, and there are uncertainties surrounding how much revenues the DEQ will receive from year to year

Frank asked if there were any more current issues that the EAC wanted to raise. A member asked whether the state of the DEQ budget would be impacting the review of local stormwater control programs. Frank suggested that this discussion would be better suited for the October meeting when Rich Powers, Chief of the Water Bureau, would be discussing water issues with the EAC.

Another member spoke of continuing community concerns regarding the Midland and Tittabawassee River area dioxin issue. Frank indicated that the Director is aware of the concerns and advised that the member speak directly with him on these issues.

A member indicated that there are concerns with the Confined Animal Feeding Operation permit. Frank indicated that this is another issue that could be discussed next month with Rich Powers. Frank indicated that if there are other aspects of water management that EAC members would like discussed with the Water Bureau, they should e-mail him with their interests.

Another member expressed an interest in discussion wetlands protection and monitoring.

In response to a question on the timing of implementing the restructuring discussed earlier, JoAnn Merrick, Executive Assistant to the Director explained that the restructuring is effective immediately. However, many steps need to be accomplished before it is fully implemented. One of the first steps will be to establish and fill positions, which requires Civil Service.

A member asked about the DEQ’s position on Judge Roots’ decision in the Mecosta County groundwater use case. That case had decided that the DEQ could regulate water withdrawals under Part 301, Inland Lakes and Streams, of the Natural Resources and Environmental Protection Act. That case has now been appealed. Hal Fitch, Chief of the Geological and Land Management Division, indicated that the DEQ is still considering analyzing Judge Roots’ decision.

PRESENTATION AND DISCUSSION ON REMEDIATION PROGRAMS

Lynelle Marolf, Assistant Chief of the RRD made a PowerPoint presentation (Attachment 2) and led a discussion on the DEQ remediation programs. The PowerPoint handout was distributed. In response to a question, Lynelle explained changes in the liability scheme under Part 201, Environmental Response, of the NREPA. Prior to 1995, a person acquired liability to cleanup

contamination by virtue of owning contaminated property. After 1995, a person becomes liable only by causing contamination.

A member asked how this change affected the funding available to conduct cleanups. Specifically, if fewer private parties are liable, isn't there a need for more public funding to conduct cleanups?

Andy Hogarth, Chief of the RRD outlined the sources of funding for the cleanup program. A 1988 bond proposal raised \$425 million for cleanup, \$45 million of which was devoted to redevelopment grants. That money is all obligated or spent. A subsequent bond proposal raised \$325 million, devoting \$93 million to environmental cleanups and the remainder for redevelopment projects. Between \$7-14 million of revenue from unclaimed bottle deposits is allocated to the cleanup program. The Michigan Underground Storage Tank Financial Assurance Fund has also been available, as has been some general fund revenue. With the exception of the bottle deposit funds, those sources are now all gone or rapidly disappearing. The bottle deposit funds are necessary just to pay for staff. It is estimated that \$1.5 billion is needed to cleanup all leaking underground storage tank (LUST) sites in Michigan. There is no complete inventory of other contamination sites, because there is no obligation to report such sites. Andy estimated that there is an annual need for \$25-50 million in public funding to address non-LUST contamination sites.

In response to a question, Andy described federal funding available under the Superfund program. The Superfund was financed by a fee on chemical feedstocks. That fee ended in the late 1990's and has not been renewed by Congress. As a result, the amount of money available through Superfund is diminishing. Superfund cleanups are generally very expensive. The Pine River site, for example, will cost approximately \$10 million per year and substantial sums will be necessary for many years into the future.

A member expressed concern over insufficient funding for cleanup programs. Andy estimated that program funding will run out in Fiscal Year 06 unless replacement funding is found.

A member expressed concern that the loss of staff will provide no oversight of, or assistance to, privately conducted cleanups.

Director Chester indicated that there is over \$2 billion in a federal trust fund devoted to cleanup of leaking underground storage tanks that is not being allocated for that use.

A member questioned whether the Department of Labor and Economic Growth had an opinion on whether the lack of cleanup funds was inhibiting economic development and redevelopment of contaminated sites.

A member asked why the DEQ no longer publishes the Act 307 list of contaminated sites. Andy responded that the list of contaminated sites is still updated and available on the internet. However, because it is not released at a specific time, there is very little public awareness of it.

A member asked whether the number of contamination sites was increasing. Andy and Lynelle indicated that the DEQ is notified of about 300 new releases at LUST sites every year, which is about the same rate at which sites are being addressed. We are still getting reports or releases even though new standards to prevent leaks from underground storage tanks have been in effect for several years. These reports largely reflect releases that occurred years ago, but are just now being discovered, or new releases from piping systems. There is also a problem caused by the lack of proper operation and maintenance of leak detections systems.

A member described this discussion as very discouraging. It is plain that there is a mismatch between the need to address sites of contamination and the resources available to do so. This raises the question of how priorities of the different environmental programs are set.

A member suggested that perhaps the DEQ should go back to the previous means of publicizing the list of contaminated sites as a means of alerting the public to the size of the problem.

A member expressed disappointment in the extent to which public policy in Michigan has neglected environmental protection. Michigan used to have some of the premier environmental programs and policies in the country, but now felt that this is no longer the case. We need to improve the quality of the public dialogue about these issues.

A member noted the value in the investment of public resources in compliance and enforcement. This investment is likely to result in a greater amount of expenditures in environmental cleanup by the private sector.

A member challenged the position that Michigan's environment is getting worse. Without a complete inventory of contamination sites, we can't draw this conclusion. Perhaps there should be an investment in such an inventory.

Director Chester said that it is unfortunate that we all seem to operate in a reactive mode. The budget picture is not likely to get better soon and so setting the right priorities will be important. There was a study of the comparative risk of environmental issues done in the early 1990's. Perhaps the EAC could help shape a bigger discussion, allowing us all to get a look at the bigger picture.

A member said that virtually nothing had been done with the relative risk report that had been completed in 1992. The matter just did not catch the attention of the legislators. Perhaps it will be necessary to discuss return on investment i.e., the amount of risk that is being reduced for a given level of investment. This is a way to compare the benefits of various environmental programs.

Lynelle described how that method is used in the cleanup programs. At a publicly funded site, the DEQ will undertake those actions that are most important to reduce risk and does not undertake all actions that may be necessary to completely remediate the site. In this way, public funds can be spread across the higher risks at a larger number of sites, rather than addressing all risks at a smaller number of sites.

A member described how the cleanup program had changed because of the nature of parties responsible for remediation activities. It used to be that cleanup actions were done by large, well funded operations, often manufacturing facilities. However, the number of such facilities has fallen. Now many cleanups are left to smaller, less well financed firms. Michigan's attitude toward the environment has been shaped by the abundance of resources and clean environment we have enjoyed. Given the number of contaminated sites in urban areas, citizens in these areas no longer perceive this abundance.

A member indicated that the role of the regulator in protecting the environment is constantly changing. The role must accommodate the political and economic times. Resources available to cleanup and protect the environment are very constrained. Therefore, we need to assess the proper relative role of the DEQ and the public in protecting the environment.

A member described how it would be necessary to bring all stakeholders together to set priorities on the most important environmental programs. We need to get information to the public, including the schools, on the magnitude of the issues. The State of the Michigan's Environment Report is a good place to start.

A member agreed that it is important to communicate the size of the problem and that it cannot be addressed cheaply. We must be willing to pay for it.

A member described enforcement as an expensive means of addressing environmental problems. It is important to start education on the problem early. Speaking in terms of risk provides a means to have a common currency for discussing the implications of various types of environmental problems. It is important for the DEQ to provide leadership in choosing priorities among competing problems.

A member described the lack of alignment between risks and money spent on the problems causing those risks. There should be a public discussion about the disparity. However, too often the response is that we need another law. In reality, the problems are caused by all of us, and government must help people understand they are both part of the problem and the solution.

A member related a story of how a farmer had been injured trying to remove an underground fuel tank. The farmer was trying to do it himself in order to avoid notifying the DEQ, and having to do the cleanup, if the tank had leaked. It is unfortunate that certain policies seem to discourage people from doing the right thing. Lynelle observed that it is possible that the farmer's drinking water well would have been contaminated if there was a leak. The DEQ is interested in protecting against that threat, not punishing the farmer or forcing the needless spending of money.

A member described Part 201 as an interesting experiment in self regulation. People are largely left on their own in undertaking cleanup activities. People often try to avoid spending money. The ability and willingness to enforce is very important. The investment spent on enforcement could be recouped many times over in actual work done, and the potential for cost recovery has important implications for the DEQ's budget. The people of Michigan rely on the DEQ to protect their health and the environment. Other state agencies should be more involved as

advocates of redevelopment. The critical role of the DEQ is to take a broader perspective on the environmental effects of a given proposal. The DEQ's action in objecting to a proposal to dredge a wetland in order to build a marina was cited as an example.

A member agreed that the public depends on the DEQ for protection. It has been 22 months since public was informed of elevated dioxin levels in Midland and the Tittabawassee area, and yet the remediation plan is not yet in place. Director Chester offered to discuss the status of this issue directly with the member.

Director Chester indicated that he understands and wants all employees to be problem solvers. Working within the confines of the law, employees must determine what is good for the environment and the public. But this is a two way street. It is important that the regulated community bring an interest in solving problems to the table as well.

In response to a request from Frank, Lynelle went over the information in her presentation on risk based decision making.

A member described how the distinction between voluntary and involuntary risk drives the issue of environmental justice. Part of the community's concern is that they have no control over the risks imposed on them. Based on this member's experience, when the community is given a role in how their community will be developed, they are much more receptive to specific development proposals.

Director Chester said that risk calculations are based on a number of assumptions. He asked the implications of having different levels of risk apply in different communities based on community choice. And who is the "community" for purposes of judging the acceptability of a risk? A member also asked about those who are not part of the conversation, such as future generations. The role of the government is to protect such people.

Another member said that communities face different economic situations. All communities should have the same rights and a poorer community should not be forced to accept more risk in order to encourage economic development. The member cited a book, Uncertain Science, Uncertain World, that addressed these issues very well.

A member described the concept of risk as involving three components: risk assessment, risk management, and risk communication. It is risk communication that we are most weak on. We don't do a good job of conveying the uncertainty inherent in risk assessment.

A member indicated that maybe we are trying to work on too wide a range of issues. We need to inform the public of the risk management aspects of the decisions we face.

A member suggested that the DEQ should create a core group of staff to evaluate the issue of relative risk. Staff work groups have done a good job on two issues with which the EAC has been involved—public involvement and department restructuring. Perhaps that would be a good way to identify the priority environmental issues. This staff team could work with others, such

as the Governor's Office, foundations and corporations that did the prior relative risk study years ago. Such an effort could determine what needs to be done and how to fund it.

Director Chester described the DEQ strategic planning efforts. That effort tries to get at the big picture, but also needs to recognize that our efforts are largely constrained because it is compartmentalized and driven by external forces. Still it will be important to continue to discuss these issues and welcomes the EAC's further participation in that discussion.

CLOSING BUSINESS

Frank reminded the EAC that the September meeting would include a discussion of the DEQ efforts to improve public involvement. He asked members to talk with those they work with, consider whether we've made progress, and come to the September meeting ready to discuss that issue.

Notes by Linda Albro Sparks; summary by Frank Ruswick.